

Message Text

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15

ACTION EA-14

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-11 L-03

NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20

USIA-15 AID-20 IO-14 OMB-01 DRC-01 /126 W

----- 064526

R 180926Z SEP 74

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 6973

C O N F I D E N T I A L MANILA 11242

E.O. 11652: N/A

TAGS: PINT, RP

SUBJECT: SUPREME COURT UPHOLDS MARTIAL LAW

REF: (A) MANILA 10986; (B) MANILA 10919

BEGIN SUMMARY: ON SEPTEMBER 17, SUPREME COURT UNANIMOUSLY
DISMISSED HABEAS CORPUS PETITIONS, UPHELD
MARTIAL LAW AND DECLARED "STATE OF REBELLION" WHICH
JUSTIFIED ITS ORIGINAL PROCLAMATION "CONTINUES TO BE
PRESENT." END SUMMARY

2. IN MAJOR DECISION ANNOUNCED SEPTEMBER 17, SUPREME COURT
UNANIMOUSLY DISMISSED NINE HABEAS CORPUS PETITIONS FILED ON BEHALF
31 PERSONS INCLUDING AQUINO WHO WERE DETAINED UNDER PROVISIONS OF
MARTIAL LAW. SC RULED PETITIONERS' CONTENTION THAT
PROCLAMATION 1081 INVALID WAS FORECLOSED BY "TRANSITORY
PROVISIONS OF 1973 CONSTITUTION" AND COURT'S PREVIOUS
RULING (JAVELLANA VS EXECUTIVE SECRETARY). ALL PETITIONERS
EXCEPT AQUINO HAD BEEN RELEASED
FROM DETENTION PRIOR TO COURT DECISION BUT
SIXTEEN DECLINED WITHDRAW PETITIONS SINCE THEY STILL SUB-
JECT TO POST-DETENTION RESTRICTIONS.

3. CHIEF JUSTICE MAKALINTAL, WHO WROTE MAJORITY DECISION,
UPHELD REGIME'S RIGHT TO RULE UNDER MARTIAL LAW, DETAIN
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PERSONS WITHOUT CHARGES AND RESTRICT FREEDOM OF INDIVI-

DUALS RELEASED FROM DETENTION. HE DECLARED MARTIAL LAW PROCLAMATION AUTOMATICALLY SUSPENDED WRIT OF HABEAS CORPUS WITH RESPECT TO PERSONS ARRESTED OR DETAINED FOR ACTS RELATED TO BASIC OBJECTIVE OF PROCLAMATION VIZ SUPPRESSION OF INVASION, INSURRECTION OR REBELLION OR SAFEGUARDING PUBLIC SAFETY AGAINST IMMINENT DANGER THEREOF. HE OPINED STATE OF REBELLION EXISTED WHEN MARCOS ORIGINALLY IMPOSED MARTIAL LAW AND "STATE OF REBELLION CONTINUES TO BE PRESENT."

4. CHIEF JUSTICE WHO DESCRIBED MARTIAL LAW AS "PECULIARLY FILIPINO" SAID IT "FITS INTO NO TRADITIONAL PATTERNS OR JUDICIAL PRECEDENTS." HE REJECTED PETITIONERS' CONTENTION THAT IT SHOULD BE APPLIED ONLY IN MINDANAO WHERE ARMED HOSTILITIES ACTIVITY TAKING PLACE NOTING THIS ARGUMENT IGNORED "SOPHISTICATED NATURE AND RAMIFICATIONS OF REBELLION IN A MODERN SETTING." ACCORDING TO MAKALINTAL, THIS KIND OF REBELLION INCLUDES "SUBVERSION OF THE MOST SUBTLE KIND, NECESSARILY CLANDESTINE AND OPERATING PRECISELY WHERE THERE IS NO ACTUAL FIGHTING."

5. MARTIAL LAW OPPONENT AND ACQUINO ATTORNEY SENATOR TANADA (WHOSE SON DETAINED) CHARACTERIZED COURT RULING AS "BACKWARD STEP" QVWEAKEN COURT AS BASTION OF PEOPLE'S LIBERTIES. CLAIMING SC GOT LOST IN GENERALITIES TANADA INDICATED HE WOULD CONTINUE TO BRING SIMILAR CASES BEFORE COURT SO IT "MAY REFINE THE ROUGH EDGES OF ITS DECISION."

6. EACH JUSTICE WROTE HIS OWN OPINION AND DECISION RUNS TO 537 SINGLE-SPACE PAGES. COMMENT: LATEST SC DECISION, WHICH LEAD STORY IN ALL MANILA PAPERS SEPTEMBER 17, CATEGORICALLY REAFFIRMS PRESIDENT'S RIGHT TO CONTINUE MARTIAL LAW AND IMPOSE RESTRICTIONS ON FORMER DETAINEES. WITH THIS RIGHT NEWLY SANCTIFIED BY NATION'S HIGHEST COURT, PRESIDENT MAY FEEL HE CAN MOVE TOWARD RELEASE OF DETAINEES AS HE RECENTLY INDICATED TO AMBASSADOR (REF A). THE PROOF OF THE PUDDING, HOWEVER, IS IN THE EATING.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MARTIAL LAW, POLITICAL PRISONERS, PRISONERS RELEASE, COURT DECISIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 18 SEP 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: cunninfx
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974MANILA11242
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: DG ALTERED
Executive Order: GS
Errors: N/A
Film Number: D740262-0565
From: MANILA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740936/aaaabdwr.tel
Line Count: 107
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: (A) MANILA 10986; (B) MANILA 10919
Review Action: RELEASED, APPROVED
Review Authority: cunninfx
Review Comment: n/a
Review Content Flags:
Review Date: 08 AUG 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <08-Aug-2002 by shawdg>; APPROVED <04 MAR 2003 by cunninfx>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SUPREME COURT UPHOLDS MARTIAL LAW
TAGS: PINT, RP, (AQUINO)
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005